

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

)
) Chapter 11
)
) Case No. 19-34054-sgj11
)
)
)
)

**DECLARATION OF JOHN A. MORRIS IN SUPPORT OF HIGHLAND CAPITAL
MANAGEMENT, L.P.'S MOTION TO (A) STRIKE LETTERS ATTACHED TO
APPENDIX IN SUPPORT OF THE DONDERO PARTIES' SUPPLEMENTAL
RECUSAL MOTION [DOCKET NO. 3406], OR, (B) ALTERNATIVELY, TO COMPEL
THE LAWYERS' DEPOSITIONS**

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



I, John A. Morris, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to Highland Capital Management, L.P. (“Highland”), the reorganized debtor in the above-captioned chapter 11 case (the “Bankruptcy Case”). I submit this Declaration in support of *Highland Capital Management, L.P.’s Motion to (a) Strike Letters Attached to Appendix in Support of the Dondero Parties’ Supplemental Recusal Motion [Docket No. 3406], or, (b) Alternatively, to Compel the Lawyers’ Depositions* (the “Motion”). I submit this Declaration based on my personal knowledge and review of the document listed below.

2. Attached hereto as Exhibit 1 is a true and correct copy of email communications between myself, as counsel to Highland, and Michael Lang (“Mr. Lang”), as counsel to James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC (collectively, the “Dondero Parties”), sent between July 26, 2022 and August 5, 2022, in which I demanded that the Dondero Parties withdraw three letters (the “Letters”) from the appendix [Docket No. 3406-1] (the “Appendix”) filed by the Dondero Parties’ in support of their *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support [Docket No. 3406]* (the “Supplemental Motion”) on the grounds that the Letters are hearsay and contain substantial and material errors and omissions.

3. On or about August 3, 2022, Mr. Lang and I conferred telephonically. During this call, I explained that the Letters were hearsay and that Highland should not have the burden of rebutting and correcting a litany of errors and omissions on a recusal motion, but that if the Dondero Parties refused to withdraw the Letters, Highland would seek to depose the authors of the

Letters (Douglas Draper and Davor Rukavina, together, the “Lawyers”) who represent certain of the Dondero Parties. In response, Mr. Lang explained that the Dondero Parties did not intend to offer the Letters to prove the truth of the matters asserted, but only to establish that the Letters were actually sent, purportedly in accordance with the Court’s guidance. To resolve the issue, I offered to stipulate that the Letters were sent if the Dondero Parties agreed to withdraw them from the evidentiary record.

4. As shown on **Exhibit 1**, after Mr. Lang rejected Highland’s offer of a stipulation, Highland sought the depositions the Lawyers who represent certain of the Dondero Parties.

5. The Dondero Parties ignored Highland’s request for the depositions.

Dated: August 15, 2022.

/s/ John A. Morris
John A. Morris

EXHIBIT 1

From: John A. Morris
Sent: Friday, August 5, 2022 3:39 PM
To: Michael Lang <mlang@cwllaw.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>
Subject: Re: Highland: Demand for Removal of Letters from Appendix

Will you make Mr. Draper and Mr. Rukavina available for depositions next?

I am available 8/11 and 8/12. Would agree to limit each to four hours.

Please let me know if that will resolve the dispute.

Thanks.

John

Sent from my iPhone

On Aug 5, 2022, at 3:19 PM, Michael Lang <mlang@cwllaw.com> wrote:

John- I'm afraid we cannot agree. We do agree that we aren't offering the letters for the truth of what's in them. Obviously you need to do what you feel you need to do.

I'll give you a call late next week to see if we can have some agreement on our objective to get this issue into a final, appealable order.

Have a good weekend,

Michael



Michael Lang

Crawford, Wishnew & Lang PLLC

D: +1(214)-817-4503 | M: 214-235-3986 | mlang@cwllaw.com

www.cwllaw.com

[1700 Pacific Ave., Suite 2390 Dallas, Texas 75201](#)



On Aug 5, 2022, at 2:05 PM, John A. Morris <jmorris@pszjlaw.com> wrote:

Michael,

Following up.

I need a final answer as to whether you will withdraw the attorney letters in exchange for a stipulation that proves the point that you said your client was interested in making: that they followed the court's advice and sent the letters.

If we don't have an agreement by COB, we'll prepare and file our motion to strike.

Have a good weekend.

John

Sent from my iPhone

On Jul 30, 2022, at 9:46 AM, Michael Lang <mlang@cwl.law> wrote:

Good. Thanks, John. I'll give you a call next week to discuss the letters/exhibits.

[photo]

Michael Lang
Crawford, Wishnew & Lang PLLC
D: +1(214)-817-4503<[tel:D:%20+1\(214\)-817-4503](tel:D:%20+1(214)-817-4503)> | M: 214-235-3986<<tel:M:%20214-235-3986>> | mlang@cwl.law<<mailto:mlang@cwl.law>>

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On Jul 30, 2022, at 8:09 AM, John A. Morris <jmorris@pszjlaw.com> wrote:

Michael:

Confirming the schedule as follows:

8/3 Movants respond to “attorney letter” issue raised below
8/15 HCMLP files response to motion
8/22 Movants file reply
8/31 Argument (9:30 am Central Time – you will file notice on the docket)

Good?

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com<<mailto:jmorris@pszjlaw.com>>
vCard<<http://www.pszjlaw.com/vcard-91.vcf>> |
Bio<<http://www.pszjlaw.com/attorneys-john-morris.html>> |
LinkedIn<<https://www.linkedin.com/in/john-morris-a52417a>>

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From: Michael Lang [<mailto:mlang@cw1.law>]
Sent: Friday, July 29, 2022 12:45 PM
To: John A. Morris <jmorris@pszjlaw.com>
Subject: Re: Highland: Demand for Removal of Letters from Appendix

John - please call me Michael. I received your email, but have been tied up in 2 pre-trials this week, so I haven't had a chance to confer with my client. I'll get back to you by Wednesday.

[photo]

Michael Lang
Crawford, Wishnew & Lang PLLC
D: +1(214)-817-4503<tel:D:%20+1(214)-817-4503> | M: 214-235-
3986<tel:M:%20214-235-3986> | mlang@cw1.law<mailto:mlang@cw1.law>

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On Jul 26, 2022, at 12:44 PM, John A. Morris
<jmorris@pszjlaw.com<mailto:jmorris@pszjlaw.com>> wrote:

Dear Mr. Lang:

As you know, we represent Highland Capital Management, L.P. (“HCMLP”) and we write with respect to your clients’ (together, the “Movants”) recent motion for a final appealable order and supplement to their earlier-filed recusal motion (the

The Movants included in their Appendix three letters (together, the “Letters”) from their lawyers (Douglas Draper and Davor Rukavina) that were sent to the Office of General Counsel, Executive Office for U.S. Trustees. See Exhibits 35, 36, and 37.

The Letters are rank hearsay (and contain substantial and material errors and omissions) and have no place in the evidentiary record. HCMLP demands that the Movants immediately withdraw the Letters from their Appendix. If the Movants refuse to do so, HCMLP will promptly move to strike or, alternatively, seek leave to depose Messrs. Draper and Rukavina.

Please let us know by the close of business on Friday, July 29, whether the Movants will withdraw the Letters from their Appendix.

Regards,

John
John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com<<mailto:jmorris@pszjlaw.com>>
vCard<<http://www.pszjlaw.com/vcard-91.vcf>> |
Bio<<http://www.pszjlaw.com/attorneys-john-morris.html>> |
LinkedIn<<https://www.linkedin.com/in/john-morris-a52417a>>

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